

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JEFFERY J. JACKSON,)
)
Plaintiff,)
)
v.) Case No. CV411-010
)
STEVEN BEAUVAIS,¹)
)
Defendant.)

REPORT AND RECOMMENDATION

In an order dated January 31, 2011, the Court granted plaintiff's motion to proceed *in forma pauperis* and ordered him to submit a Prisoner Trust Fund Account Statement form and a Consent to Collection of Fees from Trust Account form. (Doc. 5.) The Court warned plaintiff that his failure to return those forms within 30 days would result in the dismissal of his case. (*Id.*) Plaintiff returned the Consent to Collection of Fees form but neglected to return the Prison Trust Fund

¹ While plaintiff names defendant "Steven Bevais," the Court is confident that he is referring to Savannah attorney Steven L. Beauvais. The Court has amended the caption accordingly. The Clerk shall do likewise for the docket, and all subsequent filings shall conform.

Account Statement form. Because plaintiff has not complied with the conditions of the Court's order, this case should be **DISMISSED**.

Alternatively, the case should be dismissed because it fails on the merits. Jackson seeks money damages from Mr. Beauvais, who acted as his public defender in a Chatham County Superior Court criminal action. (Doc. 1 at 2-3.) He claims that Beauvais failed to have him tried as a child and coerced him into entering a guilty plea. (*Id.* at 1-2.) The federal statute Jackson relies upon, 42 U.S.C. § 1983, only applies to civil rights violations committed by those acting under color of state law. A public defender who serves as counsel for a defendant in a criminal proceeding does not act on behalf of the state but is instead the state's adversary. *Polk County v. Dodson*, 454 U.S. 312, 318-19, 318 n.7, 323 n.13 (1981). Hence, Beauvais was not acting under color of state law and is not reachable under § 1983. *Id.* at 318, 324-25. At best Jackson has a state law malpractice claim against Beauvais, not a federal civil rights claim.

SO REPORTED AND RECOMMENDED this 22nd day of March, 2011.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT of GEORGIA